

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

EDWARDS & ANGELL, LLP,
Plaintiff,

Vs.

HISTATEK, LLC and
HISTATEK, INC.,
Defendants.

Civil Action No. 04-11632-DPW

AFFIDAVIT OF ATTORNEY MARK DAVID MODEST

I, Mark David Modest, being duly sworn, do hereby depose and say that:

1. I am the attorney for Edwards & Angell, LLP, Plaintiff in the above-entitled and numbered action, and am acquainted with the facts in this case and have personal knowledge of the matter set forth in this Affidavit.

2. I make this Affidavit in support of Plaintiff's Motion for Default Judgment Against the Defendant, Histatek, Inc., Pursuant to Rule 55(b)(1).

3. On September 20, 2004, a default was entered against the Defendant, Histatek, Inc., as a result of its failure to serve or file a responsive pleading or to otherwise defend as to the Plaintiff's Complaint in this action.

4. On September 30, 2004, I was informed by the Plaintiff that the Defendant, Histatek, Inc., a/k/a Histatek, LLC, had filed a petition in bankruptcy on September 8, 2004 in the United States Bankruptcy Court for the District of Arizona, Case Number: 2:04-bk-15912-RTB. A true and accurate copy of the notice that I received from the Plaintiff is attached hereto, marked as **Exhibit "A"**, and incorporated herein by reference.

5. The filing of the bankruptcy case automatically stayed certain collection and other actions against the Defendant, Histatek, Inc., a/k/a Histatel LLC, and the Defendant's property.

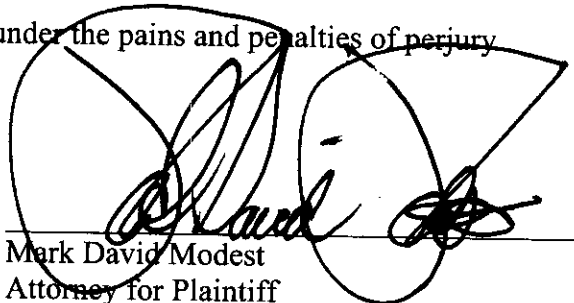
6. As a result of the automatic stay, the Plaintiff was unable to take the necessary and appropriate action with respect to this Court's Standing Order Regarding Motions for Default Judgment within 30 days of the date of the issuance of this Court's Order on September 20, 2004.

7. On November 5, 2004, I was informed by the Plaintiff that, on October 12, 2004, an Order Dismissing Case was entered by the United States Bankruptcy Court for the District of Arizona as a result of Defendant, Histatek, Inc.'s failure to timely file the schedules and statements required by Fed. R. Bankr. P. 1007. A true and accurate copy of the Order Dismissing Case that I received from the Plaintiff is attached hereto, marked as **Exhibit "B"**, and incorporated herein by reference.

8. The Plaintiff had no intention of abandoning its claims against the Defendants and has a valid and meritorious cause of action that it had prosecuted and intends to prosecute diligently and in good faith.

9. For the reasons set forth above, this case should remain on the docket.

Subscribed this 8th day of November, 2004 under the pains and penalties of perjury

A handwritten signature in black ink, appearing to read 'Modest', is written over a horizontal line. The signature is stylized with large, sweeping loops.

Mark David Modest
Attorney for Plaintiff
188 Oaks Road
Framingham, MA 01702
(508) 820-4333
BBO# 350280

CERTIFICATE OF SERVICE

I, Mark David Modest, attorney for Edwards & Angell, LLP, the Plaintiff in the above-entitled and numbered action, hereby certify that I have this date served the foregoing **Affidavit of Attorney Mark David Modest** upon the Defendant, Histatek, Inc., by mailing a copy thereof by first class mail, postage prepaid, addressed to:

Histatek, Inc.
4645 East Cotton Center Boulevard
Building 2, Suite 171
Phoenix, Arizona 85040

Dated: November 10, 2004



Mark David Modest

EXHIBIT A

FORM B9B (Chapter 7 Corporation/Partnership) Case Number 2:04-bk-15912-RTB

UNITED STATES BANKRUPTCY COURT
District of Arizona

A chapter 7 bankruptcy case concerning the debtor Corporation Publicly listed, below was filed on September 8,

You may be a creditor of the debtor. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor(s) (name(s) and address):
HISTATEK, INC.
aka HISTATEK, L.L.C.
4645 E COTTON CENTER BLVD
BLDG 2, SUITE 171
PHOENIX, AZ 85040

Case Number:
2:04-bk-15912-RTB

Attorney for Debtor(s) (name and address):
FRANKLIN D. DODGE
RYAN RAPP & UNDERWOOD, P.L.C.
3101 N. CENTRAL AVE., #1500
PHOENIX, AZ 85012
Telephone number: 602-280-1000

Taxpayer ID No.:
33-1062295

Bankruptcy Trustee (name and address):
ROBERT VUCUREVICH
PO BOX 42327
PHOENIX, AZ 85080-2327
Telephone number: 623-516-0590

Date: October 18, 2004

Time: 11:30 AM

Location: US Trustee Meeting Room, 230 N. First Avenue, Suite 102, Phoenix, AZ

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action, in violation of the Bankruptcy Code, you may be penalized.

Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.

Address of the Bankruptcy Clerk's Office: Terrence S. Miller, Clerk of Bankruptcy Court

ffs. apt.c,y areola
t.o. t~ox :mt3~
Phoenix, AZ 85067-4151
Telephone number: 602-640-5800

Hours Open: Monday - Friday 9:00 AM - 4:00 PM

Date: September 21, 2004

EXHIBIT B

FORM VAN-122

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:

Case No.: 2:04-bk-15912-RTB

HISTATEK, INC.
aka HISTATEK, L.L.C.
4645 E COTTON CENTER BLVD
BLDG 2, SUITE 171
PHOENIX, AZ 85040
SSAN:
EIN: 33-1062295

Chapter: 7

Debtor(s)

ORDER DISMISSING CASE

- ☐ The debtor(s) having failed to file a list of creditors in the proper format as required by Local Bankruptcy Rule 1007-1.
- ☐ The debtor(s) having failed to pay the filing fee as ordered by the court.
- ☒ The debtor(s) having failed to timely file the schedules and statements required by Fed. R. Bankr. P. 1007.
- ☐ The debtor(s) having failed to timely file a Chapter 13 plan as required by Fed. R. Bankr. P. 3015.
- ☐ The debtor(s) having failed to timely submit the Statement of Social Security Number as required by Fed. R. Bankr. P. 1007(f).
- ☐ The debtor(s) having failed to appear and be examined at the meeting of creditors as required by 11 U.S.C. Section 343.
- ☐ An Order to Show Cause why this case should not be dismissed having been issued.
- ☐ The trustee having moved to dismiss this case.
- ☐ The debtor(s) having moved to dismiss this case.

IT IS ORDERED that the above-captioned case be dismissed. Jurisdiction is retained over any matters arising under Section 110.

IT IS FURTHER ORDERED that any pending hearings, including any final hearing set on a motion for relief from the automatic stay are vacated.

IT IS FURTHER ORDERED that the Court shall not consider a motion for reinstatement of the case unless all fees are paid in full or all required documents are filed.

Date: October 12, 2004

BY THE COURT

Address of the Bankruptcy Clerk's Office:
U.S. Bankruptcy Court, Arizona
230 North First Avenue, Suite 101
Phoenix, AZ 85003-1706

HONORABLE Redfield T. Baum Sr.
United States Bankruptcy Judge

Telephone number: 602-682-4000